South Carolina State Ethics Commission
5000 Thurmond Mall, Suite 250
Columbia, South Carolina 29201

SEC AO2002-001 **September 19, 2001**

SUBJECT: PROPER PROCEDURE FOR THE TRANSFER OF FEDERAL CAMPAIGN FUNDS TO A STATE CAMPAIGN ACCOUNT

SUMMARY: The Ethics Reform Act permits the transfer of a federal candidate's campaign funds to a candidate's state campaign account as long as the state campaign receives written authorization from the person originally making the contribution in accordance with Section 8-13-1352.

QUESTION: May a federal candidate's campaign funds be transferred to the candidate's state campaign account without first seeking the written authorization of the person originally making the contribution to the federal campaign?

DISCUSSION: The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

From the outset, it appears that the state candidate relied on incorrect and incomplete advice given by the Commission's General Counsel for a significant period of time. This advice was given without benefit of Federal Election Commission opinions. Although this reliance on incorrect and incomplete information is unfortunate, the Ethics Reform Act provides the proper procedure for transferring funds from one campaign account for elective office to second campaign account for a different elective office.

> Section 8-13-1352 states:
> Notwithstanding the provisions of Section 8-13-1350, a candidate may use or permit the use of contributions solicited for or received by the candidate to further the candidacy of the individual for an elective office other than the elective office for which the contributions were received if:
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> > (1) the person originally making the contribution gives written authorization for its use to further the candidacy of the individual for a specific office which is not the office for which the contribution was originally intended; and

(2) the contribution is otherwise permitted by law.

Section 8-13-1350 states:

(A) A candidate for elective office may use or permit the use of contributions solicited for or received by the candidate for that office to further the candidacy of the individual for a different office as long as the contributions have been received on or before December 31, 1992, and have been transferred to a campaign account for the different office on or before December 31, 1992. A contribution solicited for or received on behalf of the candidate is considered solicited or received for the candidacy for which the individual is then a candidate if the funds or contributions are solicited or received before the general election for which the candidate is a nominee or is unopposed. The prohibition on the use or solicitation of funds does not limit in any way a candidate from retaining funds for use in a subsequent race for the same elective office.

(B) Any assets or funds which are:

(1) the proceeds of a campaign contribution which are held by or under the control of a public official or a candidate for public office on January 1, 1993; and

(2) which continue to be held by or under the control of a public official or a candidate for public office on January 1, 1993; are subject to the provisions of subsection (A).

This question is unique because the transfer of funds is being made from a federal candidate's campaign account to a state candidate's campaign account. This transfer must then comply with both the Federal Election Campaign Act (FECA)[1] and the Ethics Reform Act. A transfer of funds from a federal candidate's campaign to a non-federal/state campaign account, although clearly permitted by the FECA, must comply with the applicable state campaign laws.[2] Therefore a transfer from a federal campaign account to a South Carolina

[1]Excess federal campaign funds "[m]ay be used for any other lawful purpose, except that, other than as set forth in paragraph (e) of this section, no such amounts may be converted by any person to any personal use....." 11 CFR 113.2(a)(2)(d).

[2]The Federal Election Commission in Advisory Opinion 1986-5 concluded "that so long as the proposed transfer of funds from the Federal campaign committee to the local campaign committee is permissible under Indiana law, and assuming any funds so transferred are in fact used in the candidate's local election campaign and not diverted to

campaign account must comply with the procedures set forth in Section 8-13-1352. If a former federal candidate could simply transfer the lump sum of excess funds to his state campaign account, then the transfer would be treated as a contribution by the candidate and would be subject to reimbursement to the candidate at final disbursement. Clearly, this reimbursement works as a conversion of federal campaign funds to personal use in violation of the 2 U.S.C. §439a.

In SEC AO99-006 the Commission advised a candidate that "[t]he first in, first out (FIFO) accounting method would be the approach to use. Election campaigns are 'pay as you go' affairs. It would be irrational to attribute monies raised late in a campaign or even after the election to expenditures made prior to the election unless to pay off loans." In that same opinion the Commission advised the candidate that '[a]n individual's contribution to a statewide campaign, regardless of its source, *i.e.* campaign carryover, direct contribution to a new campaign, or a mixture of the two may not exceed the $3500 requirement as stated in Section 8-13-1314." Section 8-13-1314 provides that no candidate for statewide office may accept a contribution in excess of $3500 per election cycle.

Finally, Section 2-17-80 states:

> (A) A lobbyist or a person acting on behalf of a lobbyist shall not offer, solicit, facilitate, or provide to or on behalf of any member of the General Assembly, the Governor, the Lieutenant Governor, any other statewide constitutional officer, any public official of any state agency who engaged in covered agency actions, or any of their employees any of the following:
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> (1) lodging;
> (2) transportation;
> (3) entertainment;
> (4) food, meals, beverages, money, or any other thing of value;
> (5) contributions, as defined in Section 8-13-1300(7).
>
> (B) A member of the General Assembly, the Governor, the Lieutenant Governor, any other statewide constitutional officer, any public official of any state agency who engaged in covered agency actions, or any of their employees shall not solicit or receive from a lobbyist or a person acting on behalf of a lobbyist any of the following:
>
> (1) lodging;
> (2) transportation;
> (3) entertainment;

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the candidate's person use, such a transfer would be permissible under 2 U.S.C. § 439a."

(4) food, meals, beverages, money, or any other thing of value;
(5) contributions, as defined in Section 8-13-1300(7).

Because registered lobbyists are prohibited from contributing to candidates for governor, any contributions by registered lobbyists to the federal campaign could not be transferred to the state campaign account.

CONCLUSION:

Accordingly, the Commission advises the former federal candidate, notwithstanding the incorrect advice previously given by General Counsel, that the Ethics Reform Act permits the transfer of a federal candidate's campaign funds to a candidate's state campaign account, as long as the transfer complies with the written authorization procedures set forth in Section 8-13-1352.

KEY WORDS:	transfer, campaign accounts, contributions

ANNOTATIONS:	8-13-1352, 8-13-1350, 8-13-1314 and 2-17-80